

NATIONAL REPORT: SLOVENIA

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February 2014

A. General

1. What kinds of formal relationships between a couple (e.g. different/same-sex marriage, different/same-sex registered partnership, etc.) are regulated by legislation? Briefly indicate the current legislation.

Slovene family law regulates three forms of life union: marriage, an extramarital union and a (registered) same-sex partnership union. The first two forms of life union are intended only for partners of a different sex and are regulated by the Marriage and Family Relations Act (hereinafter the Slovenian Marriage Act),¹ while a registered same-sex partnership is regulated by a special law, separately from the system of the other two heterosexual life partnerships. It is regulated by the Registration of Same-Sex Civil Partnership Act (hereinafter the Slovenian Partnership Act).²

Marriage is a legally regulated life union between a man and a woman. A marriage is concluded before the competent state body since a civil marriage is compulsory. An administrative unit has jurisdiction for concluding a marriage but it may delegate its competence to a municipality. A marriage is concluded in the presence of a registrar and two witnesses with contractual capacity. A marriage is validly concluded at the moment when the couple express their agreement to its conclusion. Concluding a marriage creates legal consequences both between the spouses (for example, it creates common assets between the spouses and there is a duty to maintain or support each other) and in relation to children, whereby a marriage bears the presumption that the mother's husband is the father of the children.

A same-sex partnership union creates legal consequences if it is registered before an official of an administrative unit by means of a signature attesting to a declaration on registration.³ The legal consequences for the partners in the areas of maintenance, assets and housing are for the most part the same as for a married couple. A partner, for instance, has the possibility after the cessation of the union to continue leasing relations. However, they are entirely different in the regulation of rights in the event of the illness of the other partner.⁴ In the case of the illness of the other partner, a registered partner has an unlimited right to be informed about the illness of his or

¹ Uradni list RS (Official Journal) No. 69/2004 (consolidated text), 101/2007, 122/2007, 90/2011, 84/2012.

² Uradni list RS (Official Journal) Nos 65/2005, 55/2009. The Registration of Same-Sex Civil Partnership Act entered into force in July 2005 but only began to be applied a year later, when the executive act for its implementation was also adopted (Regulation on the registration of same-sex civil partnerships, Uradni list RS (Official Journal) No. 55/2006).

³ Para. 3 of Art. 6 of the Slovenian Partnership Act.

⁴ Art. 21 and 22 of the Slovenian Partnership Act.

her partner, while under the general arrangement, family members may only be informed if the person who is ill did not explicitly prohibit communicating his or her health data, the right to visit the partner in hospital and the right to decide on the treatment of the partner if the partner cannot herself or himself decide thereon. Married partners do not have such rights – for an adult person who does not have the capacity to consent, the right of consent is given under the general arrangement to a guardian. Under the legislation, registered partners do not have other rights than those enumerated in the Slovenian Partnership Act, e.g., in the tax and social spheres; an exception is the regulation of inheritance (a partner inherits under the general arrangement of the Slovenian Inheritance Act⁵). The law also does not regulate the relations of same-sex partners concerning children, such as the duty to care for the children of their partner, the possibility of adoption, or fertilisation with biomedical assistance.⁶

2. To what extent, if at all, are informal relationships between a couple regulated by specific legislative provisions? Where applicable, briefly indicate the current specific legislation. Are there circumstances (e.g. the existence of a marriage or registered partnership with another person, a partner's minority) which disqualify the couple?

For the creation of an extramarital union, a formal confirmation of the union is not required. It suffices for its recognition that a man and a woman live together for an extended period and that no reasons exist which would result in a marriage being invalid, such as the relationship between the partners being within the prohibited degrees of consanguinity, an already concluded marriage with another partner, or a permanent unsoundness of mind by a partner because of a serious mental illness. Since the law has also regulated same-sex partnership unions, it must also apply⁷ that nobody may conclude a marriage or plan an extramarital union while still being in a registered same-sex union. This requirement derives not only from the principle of monogamy within marriage or an extramarital union but also from the principle of monogamy within a same-sex partnership, with which an already existing marriage is an impediment to the registration of a same-sex partnership union.⁸

The legal consequences of an extramarital union appear on the basis of the law alone (without a court decision) and irrespective of whether the partners who have been living together for an extended period even really desire this. The legal consequences of an extramarital union are the same in a relationship between extramarital partners as in a marriage: from the moment when they start to live together, common

⁵ Uradni list SRS (Official Journal) Nos 23/1978, RS 17/1991-I; Uradni list RS (Official Journal) Nos 13/1994, 40/1994, 82/1994, 117/2000, 67/2001, 83/2001, 73/2004.

⁶ Because implementing regulations for the registration procedure were only adopted in the summer of 2006 and because same-sex couples believe that the law is discriminatory in a number of provisions in comparison to the legal regulation of the life unions of different-sex couples, there are currently only a small number of partnership unions registered in Slovenia.

⁷ The Slovenian Marriage Act does not determine this, because after the adoption of the Partnership Act it still remained unchanged.

⁸ Indent 2 para. 1 Art. 3 of the Slovenian Partnership Act.

property of the partners is created (which is normally divided in half at the time of the cessation of the union); and an unsupported partner has the right to demand maintenance from the other partner. An extramarital union does not have legal consequences in the relation of the extramarital partners with the children. There is no presumption of fatherhood, so in this case fatherhood must be recognised or legally established.⁹

An extramarital union only creates the same legal consequences between the partners as a marriage in relation to rights that the Slovenian Marriage Act recognises, i.e., the partners primarily obtain the right to share common property and the right to maintenance. In other legal spheres that the Slovenian Marriage Act does not regulate, an extramarital union has legal consequences only if legislation in this sphere so determines. Legal consequences are determined by, e.g., the inheritance, housing, pension and invalidity legislation.

If a dispute exists between the partners about the existence of an extramarital union, the existence of the extramarital union can only be decided as a prior question which is important for resolving a main question, for example, the question of whether inheritance rights exist after the death of a partner, whether the right to maintenance exists, or whether common property has been created that should be shared. The resolution of the prior question on the existence of the extramarital union only has effect for the case in which the question was resolved.

Although family legislation on extramarital unions is not intended for couples of the same sex and although regulations in the field of family law and other legal fields create the impression that same-sex partners living together do not exist at all, let alone that the law would regulate relations between them, this is not entirely the case. Same-sex partners from an actual life union enjoy certain rights with the aid of interpretation of applicable provisions in the light of the constitutional principle of the prohibition of discrimination (Art. 14 of the Slovenian Constitution¹⁰). Under family regulations, same-sex partners living together have the right to the unilateral adoption of children (interpretation of Art. 135 of the Slovenian Marriage Act)¹¹ and the right as former or current partners to have contact with the children of their present or former partner from a *de facto* life partnership if the child has a family connection with them and they are personally connected to the child and this is to the child's benefit (a child's contact with other persons, para. 1 Art. 106a of the Slovenian Marriage Act). Regulations outside family law recognise the status of a narrower family member for a partner from a *de facto* life partnership in the sphere of

⁹ K. ZUPANČIČ, 'Report on Slovenian Family Law Regulation', in: A. BERGMANN and M. FERID, *Internationales Ehe- und Kindschaftsrecht*, Verlag für Standesamtswesen, Frankfurt am Main, 1997, at p. 32.

¹⁰ Uradni list RS (Official Journal) Nos 33/1991-I, 42/1997, 66/2000, 24/2003, 69/2004, 68/2006, 47/2013.

¹¹ Decision of the Ministry of Labour, Family and Social Affairs, no. 12030-7/2011/4 of 14 July 2011 (unpublished), and decision of Domžale Social Work Centre, no. 12037-1/2011-2 of 27 December 2011 (unpublished).

medicine (interpretation of point 15 at Art. 2 of the Slovenian Patients' Rights Act).¹² The Slovenian Patients' Rights Act, for example, recognises for narrower family members the right of consent in the use and other processing of medical and other personal data on a deceased patient (under para. 4 Art. 44 of the Slovenian Patients' Rights Act¹³), the right to information on the state of health of the patient (under para. 5 Art. 45 of the Slovenian Patients' Rights Act), the right to demand 'the initiation of a procedure for the protection of a patient's rights (under para. 3 Art. 48 of the Slovenian Patients' Rights Act). On the basis of the decision of the Constitutional Court RS, No. U-I-212/10-15 of 14 March 2013,¹⁴ the right of non-registered same-sex partners living together to inherit to the same extent as extramarital partners of a different sex is explicitly recognised.

3. In the absence of specific legislative provisions, are there circumstances (e.g. through the application of the law of obligations or the law of property) under which informal relationships between a couple are given legal effect (e.g. through the application of the law of obligations or the law of property)? Where applicable briefly indicate the leading cases

The Slovenian Marriage Act contains general provisions by which an extramarital union between partners has the same legal consequences as a marriage in relation to rights that the Marriage Act recognises.

The decision of the Constitutional Court RS No. U-I-212/10-15 of 14 March 2013 on the inheritance of same-sex partners living together is important for the legal recognition of a life union of unregistered same-sex partners, because in it the Constitutional Court used the definition of an extramarital union under Art. 12 of the Slovenian Marriage Act for a judgement on whether a life union of same-sex partners is proven. By this decision, the Constitutional Court made it necessary for the legislator also in regulating family relations to consider the legal recognition of *de facto* life unions of same-sex partners.¹⁵

4. How are informal relationships between a couple defined by either legislation and/or case law? Do these definitions vary according to the context?

Legislation in fields outside family law that ascribe legal consequences to an extramarital union, in the sense that extramarital partners often derive such consequences from the definition of an extramarital union determined in Art. 12 of the Slovenian Marriage Act, although an extramarital union and thus the conditions for the occurrence of the legal consequences of this union could also be defined otherwise than in Art. 12 of the Slovenian Marriage Act: under the Slovenian Penal Code, an extramarital union is considered to be a durable life union between a man

¹² B. NOVAK, D. KOROŠEC, B. IVANC, T. BALAŽIC, in: D. KOROŠEC (ed.), *Zakon o pacientovih pravicah s komentarjem* (Patients' Rights Act with commentary), GV Založba, Ljubljana, 2009, at p. 38.

¹³ Uradni list RS (Official Journal) No. 15/2008.

¹⁴ Uradni list RS (Official Journal) No. 31/2013.

¹⁵ B. NOVAK, 'Aktuelle Entwicklungen im slowenischen Recht', *FamRZ*, No. 18, 2013, at p. 1464.

and a woman who have not concluded a marriage.¹⁶ It also occurs that legislation gives extramarital partners specific rights without checking the existence of the conditions for a legally recognised extramarital community under Art. 12 of the Slovenian Marriage Act: only partners that are in an extramarital union can request a fertilisation procedure with biomedical assistance – but the physician does not verify the existence of the extramarital union.¹⁷

5. Where informal relationships between a couple have legal effect:

a. When does the relevant relationship begin?

The legal consequences of an extramarital union begin when the partners live together for an extended time, with retrospective effect (*ex tunc*), i.e., from the moment that the partners started living together.

b. When does the relevant relationship end?

An extramarital union ends when the partners cease to live together.

6. To what extent, if at all, has the national constitutional position been relevant to the legal position of informal relationships between a couple?

The Slovenian Constitution determines that legal relations in an extramarital union shall be regulated by law (para. 2 Art. 53 of the Slovenian Constitution).

7. To what extent, if at all, have international instruments (such as the European Convention on Human Rights) and European legislation (treaties, regulations, and directives) been relevant in your jurisdiction to the legal position of informal relationships between a couple?

Slovenia has regulated extramarital unions since the Slovenian Marriage Act took effect in 1977. This legislation from 1977 has not been subsequently amended. International instruments did not affect its introduction.

International instruments have also not had a major influence on the creation of the legal recognition of a life union between unregistered same-sex partners living together. Indirectly, the Resolution on equal rights for homosexuals and lesbians in the EC and the European Convention on Human Rights have had an impact (for example, in connection with the case of *Karner v. Austria*), although the judicature of the European Court of Human Rights is fairly restrained in interpreting provisions to the benefit of persons with a same-sex orientation.

¹⁶ Para. 4 of Art. 99 of the Slovenian Penal Code, Uradni list RS (Official Journal) Nos 55/2008, 66/2008, 39/2009, 91/2011.

¹⁷ The Amending Act of the Act on the Treatment of Infertility and Procedures of Fertilisation with Biomedical Assistance, which guarantees a single woman the right to fertilisation with biomedical assistance, did not take effect because of a referendum decision of 17 June 2001.

8. Give a brief history of the main developments and the most recent reforms of the rules regarding informal relationships between a couple. Briefly indicate the purpose behind the law reforms and, where relevant, the main reasons for not adopting a proposal.

The legal regulation of extramarital unions has not changed since its introduction in 1977.

On 16 June 2011 Parliament adopted a draft Family Code¹⁸ but its entry into force was deferred because a referendum was demanded. The reason for the referendum was the decision of the legislator also to include the regulation of registered same-sex civil partnerships and unregistered actual life unions of same-sex partners, whereby a registered same-sex civil partnership, in terms of its legal consequences, was supposed to be akin to a marriage and an unregistered actual life union of same-sex partners was supposed to be akin to an extramarital union of heterosexual partners. The possibility of a referendum on the Slovenian Family Code, at the request of the National Assembly RS, which believed that anti-constitutional consequences would occur by the deferment of the implementation or the rejection of the Slovenian Family Code in a referendum, was soon submitted to the Constitutional Court for its decision. The Constitutional Court decided that the result of the referendum would not cause the creation of anti-constitutional consequences since the Slovenian Family Code would not take effect immediately but only one year after its introduction. This period was said to deviate only slightly from the same period in which the National Assembly is bound by the result of a referendum. The legal position would thus remain the same in the event of the Slovenian Family Code being rejected as in the case of its confirmation, i.e., that the Slovenian Marriage Act and the Slovenian Partnership Act would continue to be used for a further year after the proclamation of the referendum decision.¹⁹

In the referendum held on 25 March 2012, 55% of those who voted were against the Slovenian Family Code. This had the result that for one year after the proclamation of the referendum decision, the National Assembly could not adopt any new family arrangement that would be in conflict with the decision of the voters.²⁰

9. Are there any recent proposals (e.g. by Parliament, law commissions or similar bodies) for reform in this area?

In January 2015, the collegium of the president of the National Assembly, as a result of a proposal by the political party Zdrvena levica (United Left) submitted on 15 December 2015, took the decision to adopt, by means of an accelerated legislative

¹⁸ Available at: www.dz-rs.si/wps/portal/Home/deloDW?rs.si/wps/portal/Home/deloDZ/zakonodaja/izbranZakonAkt?uid=F7B438D711DE188FC12578A300523C14&db=pre_zak&mandat=V&tip=doc.

¹⁹ Decision of the Constitutional Court RS, No. U-II-3/11 of 8 December 2011, Uradni list RS (Official Journal) No. 109/2011.

²⁰ See: B. NOVAK, 'Neueste Entwicklung des Slowenischen Familienrechts', *FamRZ*, No. 18, 2012, at p. 1456.

procedure, a proposed Act to amend the Slovenian Marriage Act,²¹ which alters the definition of a marriage and an extramarital union into a sexually neutral definition: the draft amending act replaces the phrase 'community of a man and a woman' with the words 'community of two persons'.

B. Statistics and estimations

10. How many marriages and, if permissible, other formalised relationships (such as registered partnerships and civil unions) have been concluded per annum? How do these figures relate to the size of the population and the age profile? Where relevant and available, please provide information on the gender of the couple.

According to data by the Statistical Office RS, on 1 January 2011 in Slovenia, with a population of 2,050,189, there were 362,911 marriages (of which 237,422 couples had children) and 61,307 extramarital unions (of which 49,122 couples had children). Following the legalisation of registered same-sex civil partnerships, 55 couples were registered between 2005 and 2011.²²

There were 6,671 marriages concluded in 2011. The average age of the groom was 34 years. The average age of the bride was 31.2 years.

In 2011, there were 15 same-sex partnerships registered, of which 7 were male and 8 were female same-sex partnerships. There are no data on the age of the persons who registered same-sex partnerships.²³

An extramarital union is a *de facto* life union, which is not created on a formal level with registration, so there are no data on how many such unions were formed in 2011. Similarly, there are no data on *de facto* life unions between same-sex couples.

11. How many couples are living in an informal relationship in your jurisdiction? Where possible, indicate trends.

On 1 January 2011, when the first population census was carried out, there were 122,614 people living in extramarital unions. The number of extramarital unions is growing although official statistics on this are lacking.²⁴

12. What percentage of the persons living in an informal relationship are: a. Under 25 years of age?

2.28%²⁵

²¹ Proposed Act to amend the Marriage and Family Relations Act (ZZZDR-D), shortened procedure, EPA 257-VII, available at: imss.dz-rs.si/imis/4c9d4b6c7a20845698d5.pdf.

²² Available at: www.stat.si/novica_prikazi.aspx?id=4029.

²³ Available at: www.stat.si/novica_prikazi.aspx?id=4814.

²⁴ Z. ĐOKIĆ, 'Časopis Dnevnik: Poroka se (ne) spleča (Marriage (doesn't) pay)', *Dnevnik*, 6 October 2010, available at: www.dnevnik.si/clanek/1042394903.

b. Between 26-40 years of age?

51.29%

c. Between 41-50 years of age?

26.94%

d. Between 51-65 years of age?

16.48%

e. Older?

3.01%

In general it is the case that extramarital unions are more characteristic of the younger population.²⁶

13. How many couples living in an informal relationship enter into a formal relationship with each other:

a. Where there is a common child?

There are no statistical data on how many couples living in an informal relationship and having a common child enter into a formal relationship with each other. However, in view of the legal equality of legitimate and illegitimate children, the decision on having common children does not significantly influence the decision on the formalisation of the life union of the partners.

b. Where there is no common child?

There are no statistical data on how many couples living in an informal relationship without a common child enter into a formal relationship with each other.

14. How many informal relationships are terminated:

a. Through separation of the partners?

b. Through the death of one of the partners?

There are no statistical data on these questions because a life union of extramarital partners is formed and ceases without this being particularly registered anywhere.

²⁵ All answers to the above questions are based on data from the first population census in 2011, published on pxweb.stat.si/pxweb/Dialog/Saveshow.asp.

²⁶ Available: www.stat.si/doc/pub/Ljudje_druzine_stanovanja.pdf.

15. What is the average duration of an informal relationship before its termination? How does this compare with the average duration of formalised relationships?

There are no statistical data on the average duration of an informal relationship but it is the case that extramarital unions are no less stable than marriages.²⁷ Statistical data show that marriages do last longer. Data for 2011 show that married couples, on average, divorce after 15 years of marriage.

16. What percentage of children are born outside a formal relationship? Of these children, what percentage are born in an informal relationship? Where possible, indicate trends.

Slovene families have an average of 1.18 children: families in marriage predominate (64.2%), families in extramarital unions represent 10.8% of all families and single parent families account for 25% of all Slovene families.²⁸

17. What is the proportion of children living within an informal relationship who are not the couple's common children (excluding foster children)?

Every fifth family of extramarital partners (i.e. 4.1 % of all families) is a so-called re-established family, in which, on average, one non-common child that is the biological child of the female partner lives in 86% of such families with partners.²⁹

**18. How many children are adopted within an informal relationship:
a. By one partner only?**

0. Each of the partners may adopt a child separately, but there are practically no children available for adoption in Slovenia (see explanation below).

b. Jointly by the couple?

0. Extramarital partners may not adopt a child together (see explanation below).

c. Where one partner adopted the child of the other?

1. One partner may adopt the child of his or her partner, but there are not many such cases per year.

In compliance with regulations that state that nobody may be adopted by more than one person, unless the adopters are a married couple, extramarital partners may not adopt a child together; each may adopt a child separately or one partner may adopt the child of his or her partner. Because there are practically no children available for

²⁷ K. ZUPANČIČ, 'Družinsko pravo (Family Law)', *Uradni list (Official Journal) RS*, Ljubljana, 1999, at p. 123.

²⁸ Available at: www.stat.si/novica_prikazi.aspx?id=4029.

²⁹ Available at: www.stat.si/novica_prikazi.aspx?id=4029.

adoption in Slovenia, only the child of the partner enters into consideration. There are no exact data on how many such adoptions there are by an extramarital partner or a partner from a *de facto* life union of partners of a different sex, to whom the case law recently recognised the right to unilateral adoption.³⁰

19. How many partners in an informal relationship have been in a formal or an informal relationship previously?

There are no statistical data on this question.

C. During the relationship

20. Are partners in an informal relationship under a duty to support each other, financially or otherwise:

a. Where there are no children in the household?

A partner who does not have the necessary means for subsistence, and through no fault of his or her own is unemployed, remains entitled to claim maintenance from the other partner, even after the termination of the life union.

b. Where there are common children in the household?

The fact of having common children or not is irrelevant for the existence of a duty to maintain the other partner.

c. Where there are other children in the household?

The fact of having children in a household or not is irrelevant for the existence of a duty to maintain the other partner. However, an extramarital partner has a duty to support the underage children of the other partner if the child(ren) has/have no parent able to support it/them. This duty is limited only to the children of a partner that live with the partners. The duty of an extramarital partner to support the children of her or his partner ceases with the termination of their extramarital union, unless the extramarital union ceased because of the death of the child's mother or father. The extramarital partner then has a duty to support the child of her or his deceased extramarital partner only if the extramarital partner lived with the child at the time of his or her death. This duty is not mutual; so children who have attained the age of majority do not have a duty to support the unsupported extramarital partner of their parent who cared for them or supported them for an extended period.

21. Are partners in an informal relationship under a general duty to contribute to the costs and expenses of their household?

³⁰ In 2011 there were also 19 children adopted from abroad but there are no data on who their adopters were: www.mdds.gov.si/si/delovna_podrocja/druzina/posvojitve/.

Legislation does not have such an explicit provision for marital partners that could also be used for extramarital partners, but a duty to contribute to the costs and expenses of their household derives from general rules by which partners have a duty of mutual assistance (Art. 44 of the Slovenian Marriage Act) and to contribute within their means to the maintenance of the family (Art. 49 of the Slovenian Marriage Act).

22. Does a partner in an informal relationship have a right to remain in the home against the will of the partner who is the owner or the tenant of the home?

After the cessation of a life union, a partner who is not the owner cannot remain in the home in which the partners lived during the extramarital union against the will of the partner who is the owner.

Partners who lived in rented accommodation must agree which of them will remain in that dwelling when both partners are named as tenants in the rental contract, or become the tenant of the accommodation when only one of the partners is named as the tenant in the rental contract and the other partner as a person who will use the accommodation with the tenant. If there is no agreement the courts will decide in a non-litigious procedure.

23. Are there specific rules on a partner's rights of occupancy of the home:
a. In cases of domestic violence?

A partner who is the victim of violence can propose to a court that it should decide on the abandonment of a home in common use. The court is limited in the duration of such a measure if the partners are co-owners or the common owner of the home, if they have building rights, the right of enjoyment or use of the land on which the home is located or if they have rented the home together. At the proposal of the partner who is a victim of violence and who cannot find other accommodation, the court may prolong the right for six months unless this would cause a disproportionately heavy burden on a third person. The partner to whom the home is awarded for use during the time of use bears the costs of the regular maintenance of the home. At the request of the partner who was responsible for the violence, she or he must pay suitable compensation for the use of the home if this is in accordance with the principle of fairness (Art. 21 of the Prevention of Violence within the Slovenian Family Act).

b. In cases where the partner owning or renting the home is absent?

There is no special rule in that case. There is only the rule by which the lessor is obliged in the case of the (permanent) cessation of a life union with a partner who will remain in the home to continue the rental relationship under the same conditions as were applicable up until then. This provision is especially important when the partners live in a home with a rental contract for an indefinite period of

time and a non-profit lease. The rule does not apply to a service home (Art. 110 of the Slovenian Housing Act³¹).

24. Are there specific rules on transactions (e.g. disposal, mortgaging, subletting) concerning the home of partners in an informal relationship:

a. Where the home is jointly owned by the partners?

Partners manage and dispose of common property together. A legal transaction that one partner concludes in relation to common property without the necessary agreement of the other partner may be challenged by the other partner.

b. Where the home is owned by one of the partners?

There is no specific rule. A partner disposes of individual property independently.

c. Where the home is jointly rented by the partners?

There is no specific rule. Under the general rules partners who are joint lessees of a home may only jointly renounce rental relations.

d. Where the home is rented by one of the partners?

There is no specific rule. A partner who is the only lessee may renounce rental relations without the agreement of the other partner.

25. Under what circumstances and to what extent can one partner act as an agent for the other?

Partners may agree that only one of them shall manage the common property or a part thereof, or that only one of them shall manage and also dispose of the common property (Art. 52 of the Slovenian Marriage Act). Unless otherwise agreed, the partner to whom management is entrusted within the framework of regular administration may also dispose of common property or a part thereof (Art. 53 of the Slovenian Marriage Act). The general rules of the law of obligations on representation apply for all other authorisations.

26. Under what circumstances can partners in an informal relationship become joint owners of assets?

All assets that the partners obtain through work during the extramarital union are considered to be the common property of the partners (para. 2 of Art. 51 of the Slovenian Marriage Act). Common property includes, for example, pay, authors' honoraria, and payment on the basis of a work contract. Even a partner who does not engage in employment, or works part time, works and contributes to the creation of

³¹ Uradni list RS (Official Journal) Nos 69/2003, 18/2004, 47/2006, 45/2008, 57/2008, 90/2009, 62/2010, 40/2011, 56/2011, 87/2011, 40/2012.

assets and is therefore also entitled to a suitable share of the common property; for example, such a partner by his or her housework saves the costs of childcare, household assistance, and enables the other partner to devote himself or herself more fully to his or her work and thus earns more. The rule on common property is of a compulsory nature.

Assets that a partner brings to an extramarital union, as well as assets that she or he obtains during the extramarital union other than by work, such as by inheritance or a gift, are considered to be her or his personal property (para. 1 of Art. 51 of the Slovenian Marriage Act).

27. To what extent, if at all, are there specific rules governing acquisitions and/or transactions in respect of household goods? In answering this question briefly explain what is meant by household goods.

Slovene legislation does not recognise the special concept and protection of household goods, as is familiar in some other countries. It contains only the concept of common property, which includes household goods, if they correspond to the general criteria of common property.

28. Are there circumstances under which partners in an informal relationship can be regarded as joint owners, even if the title belongs to one partner only?

There are no such circumstances.

29. How is the ownership of assets proved as between partners in an informal relationship? Are there rebuttable presumptions?

A legal assumption applies in the division of common property (all assets that the partners obtain through work during the life union) that the shares in the common property are equal.

30. How is the ownership of assets proved as regards third parties? Are there rebuttable presumptions?

All assets that the partners obtain through work during the extramarital union are considered the common property of the partners. Real estate that is common property is entered in the land register as common property.

Legal transactions which in relation to matters of common property are concluded by a partner without the necessary consent of the other partner can be rebutted by the other partner,³² unless a third person concluded the legal transaction in good faith; if he did not know that it was a matter of common property and the partner was

³² Judgement of the Supreme Court RS, No. II Ips 382/2011 of 12 December 2012, and judgement of the Higher Court in Ljubljana, No. I Cp 2055/2012 of 20 February 2013 – Ius-info database.

disposing of it without the consent of the other partner (para. 3 Art. 72 of the Slovenian Code of Property Law³³).

31. Under what circumstances, if any, can partners in an informal relationship become jointly liable for debts?

For obligations that under the general regulations burden both partners (i.e., those that they undertook together, obligations arising from common property, such as additions to residential accommodation, and obligations that a partner undertakes for the current needs of the family, such as the costs of running the family accommodation) the partners are liable with both their individual and their common property. Their liability is indivisible.

32. On which assets can creditors recover joint debts?

A creditor can seize the individual property of either partner and proportionately of each of the partners in common property.

33. Are there specific rules governing the administration of assets jointly owned by the partners in an informal relationship? If there are no specific rules, briefly outline the generally applicable rules.

Partners manage and dispose of common property together. They may agree that only one of them shall manage the common property or a part thereof, or that only one of them shall manage and also dispose of the common property (Art. 52 of the Slovenian Marriage Act). A legal transaction that one partner concludes in relation to common property without the necessary agreement of the other partner may be challenged by the other partner.

D. Separation

34. When partners in an informal relationship separate does the law grant maintenance to a former partner? If so, what are the requirements?

A partner who does not have the necessary means for subsistence, and through no fault of his or her own is unemployed, remains entitled to claim maintenance from the other partner, even after the separation. She or he may claim it by an individual action within one year after the separation, provided the conditions for maintenance already existed at the time of the separation and also exist at the time when the partner claims the maintenance (Art. 81 and 81a of the Slovenian Marriage Act).

35. What relevance, if any, upon the amount of maintenance is given to the following factors/circumstances:

a. The creditor's needs and the debtor's ability to pay maintenance?

³³ Uradni list RS (Official Journal) Nos 87/2002, 91/2013.

Maintenance is decided in relation to the needs of the claimant and the capacity of the person liable to pay, in a monthly amount in advance, and is claimed from the moment when the maintenance suit was filed.³⁴

b. The creditor's contributions during the relationship (such as the raising of children)?

This circumstance is not relevant in Slovene maintenance law for calculating the maintenance to be paid to a partner.

c. The standard of living during the relationship?

This circumstance is not relevant in Slovene maintenance law for calculating the maintenance to be paid to a partner.

d. Other factors/circumstances (such as giving up his/her career)?

The circumstance of a partner giving up his/her career is not relevant in Slovene maintenance law for calculating the maintenance to be paid to a partner. However, a court may reject a maintenance claim if the payment of maintenance to the person entitled, in view of the causes of the breakdown of the marriage, would be unfair to the person liable to pay or if the entitled person at any time before or after the separation has committed a criminal offence against the liable person or anyone close to him: i.e., the children or parents of the person liable (Art. 81a of the Slovenian Marriage Act).

36. What modes of calculation (e.g. percentages, guidelines), if any, apply to the determination of the amount of maintenance?

The amount of maintenance is determined only on the basis of the needs of the recipient and the capacity of the former partner who has to pay the maintenance. Slovene maintenance law does not recognise maintenance tables or similar models for calculating maintenance.

37. Where the law provides for maintenance, to what extent, if at all, is it limited to a specific period of time?

Maintenance is determined either for an indefinite period³⁵ or more often for a specific period of time which is required for the partner to adapt to the new situation and to make any necessary arrangements (for example, concerning a loss of

³⁴ Maintenance may not be claimed retrospectively.

³⁵ An inadequate knowledge of the Slovene language is an impediment to employment that is possible to remedy within a suitable time so it is not a ground to award maintenance for an indefinite period – decision of the Supreme Court RS, No. II Ips 617/96 of 1 April 1998, in: A. JELENC PUKLAVEC, M. KONČINA - PETERNEL, D. OGRIZEK (ed.), *Vrhovno sodišče Republike Slovenije, civilni oddelek: Zbirka odločb 1998 (Supreme Court of the Republic of Slovenia, civil department: Collection of Decisions 1998)*, Gospodarski vestnik, Ljubljana, 1999, at p. 324 et seq.

employment, or when ceasing an extramarital union in which they agreed that one of them would remain at home and look after the children during their infancy).³⁶

38. What relevance, if any, do changed circumstances have on the right to continued maintenance or the amount due?

At the request of the recipient or payee, a court may increase, reduce or terminate, with executive title, specific maintenance payments if the needs of the recipient or the capacity of the payee on the basis of which the maintenance was determined change or if the recipient commits a criminal offence against the payee, or the children or parents of the payee (Art. 82c of the Slovenian Marriage Act).

39. Is the maintenance claim extinguished upon the claimant entering:

a. Into a formal relationship with another person?

The right to maintenance ceases if the former extramarital partner enters into a marriage (Art. 83 of the Slovenian Marriage Act). Since the law that regulates same-sex unions took effect, the right to maintenance would also be lost if a same-sex union is registered.³⁷

b. Into an informal relationship with another person?

The right to maintenance ceases if the former extramarital partner lives in an extramarital union (Art. 83 of the Slovenian Marriage Act).

40. How does the creditor's maintenance claim rank in relation to:

a. The debtor's current spouse, registered partner, or partner in an informal relationship?

All partners have the same ranking.

b. The debtor's previous spouse, registered partner, or partner in an informal relationship?

All partners have the same ranking.

c. The debtor's children?

All the children have the same ranking. Equal rights for legitimate and illegitimate children in Slovenia are guaranteed by the Slovenian Constitution.

d. The debtor's other relatives?

³⁶ A determination of maintenance for a partner does not appear very often in practice since partners (including women) are generally employed on a full-time basis.

³⁷ See also: B. NOVAK, 'Description of Slovene family law', *Jusletter*, 2007, at p. 5, available at: www.weblaw.ch/de/content_edition/jusletter/jusletter.asp.

There is no duty to maintain other relatives.

41. When partners in an informal relationship separate, are specific rules applicable to the determination of the ownership of the partners' assets? If there are no specific rules, which general rules are applicable?

At the time of the separation, the common property of the partners is divided. The partners must themselves reach an agreement on this in the form of a notarial protocol, or they can request a court to decide on the division. If the partners cannot agree on the extent of the common property or on the amount of their share of this property, they may request that a court decides on this in a civil proceeding.

Partners who cannot agree only on the method of division, about who will obtain individual objects from the common property, may request a division in a non-litigious procedure. If it appears in the non-litigious procedure that there is in fact a dispute between the partners about the extent of the common property or on the amount of their share of this property, the court will terminate the non-litigious procedure for the division of the property and direct the partners to engage in a civil action. Only when the civil action proceeding is complete does the non-litigious procedure for the division continue (Art. 59 of the Slovenian Marriage Act).

The court will carry out a physical division in a civil procedure if this is possible. At the request of a partner it may award, on account of her or his share, mainly objects that are intended for performing her or his trade or profession and enable her or him to earn a personal income and objects intended exclusively for her or his use. Otherwise, each partner receives, in a natural form, those objects in which a justified interest is shown. Common property may also be divided so that common ownership is changed into co-ownership.³⁸ If a physical division of property is not possible even with the payment of the difference in value or if it is only possible with an appreciable reduction in the value of the object a civil division is performed. This takes place with the sale of the object and a division of the proceeds.

Gifts that the partners have given each other and are not proportionate to the material circumstances of the provider of the gift, must be returned at the time of separation. Normal gifts need not be returned. Gifts must be returned in the condition that they were in at the moment when the reason for the separation came into being. In place of alienated gifts, their value, or the object received for them, must be returned (Art. 84 of the Slovenian Marriage Act).

42. When partners in an informal relationship separate, are specific rules applicable subjecting all or certain property (e.g. the home or household goods) to property division? If there are no specific rules, which general rules are applicable?

³⁸ Judgement of the Supreme Court RS, No. II Ips 306/2009 of 24 February 2011 – SOVS database.

Slovene family law does not recognise special rules on the protection of the home or household goods as do some foreign legal systems.

43. Do the partners have preferential rights regarding their home and/or the household goods? If so, what factors are taken into account when granting these rights (e.g. the formal ownership of the property, the duration of the relationship, the needs of each partner, the care of children)?

The court carries out a physical division of the common property in a civil procedure if this is possible. At the request of a partner it may award, on account of her or his share, mainly objects that are intended for performing her or his trade or profession and enable her or him to earn a personal income and objects intended exclusively for her or his use. Otherwise, each partner receives, in a natural form, those objects for which a justified interest therein is shown. This applies to the question of the division of a common home, in particular the housing needs of the partners, their children and other persons who live with them and other circumstances of the case.

Slovene family law does not recognise special rules on the protection of the home or household goods as do some foreign legal systems.

44. How are the joint debts of the partners settled?

For obligations that, under the general regulations, burden both partners, the partners are liable with both their individual and their common property. Their liability is indivisible. The partner that repays the debt may demand restitution from the other partner of the share of the debt that exceeds his or her own share. The share of a debt is settled according to the capacities of the partners to contribute to supporting the family (Art. 56 of the Slovenian Marriage Act).

45. What date is decisive for the determination and the valuation of:

a. The assets?

For the determination and the valuation of the common assets the date of the creation and cessation of the life union is decisive.

b. The debts?

For the determination and valuation of common debts, the date of the creation and cessation of the life union is decisive.

46. On what grounds, if any, and to what extent may a partner upon separation claim compensation upon the basis of contributions made or disadvantages suffered during the relationship?

In the division of common property there is a legal presumption that the shares of the partners in the common property are equal. A partner who believes that he or she

has contributed more to the creation of the common property may demand a larger share (Art. 59 of the Slovenian Marriage Act).

E. Death

47. Does the surviving partner have rights of inheritance in the case of intestate succession? If yes, how does this right compare to that of a surviving spouse or a registered partner, in a marriage or registered partnership?

All partners (spouses, extramarital partners, registered same-sex partners and unregistered same-sex partners living together) have the same rights to a legal inheritance.

A partner inherits in the first order of inheritance, together with the children of the testator or in the second order of inheritance together with the testator's parents if there were no children.

48. Does the surviving partner have any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of intestate succession?

On the death of a partner, the common property of the partners is divided, generally in half. The surviving partner receives her or his share of the common property and the inheritable share of the estate of the deceased partner in which the share of the common property of the deceased partner and her or his personal property belong. An unsupported partner who inherits together with the testator's descendants in the first order of inheritance may request that a court decides that she or he should also inherit the part of the inheritance that under the law would be inherited by co-heirs. A partner can also request that her or his share be increased at the expense of all or some of the co-heirs. A court may also decide on the request of a partner that he or she should inherit the entire estate if its value is so small that he or she would find himself or herself in a deprived position if it were to be divided (para. 1 Art. 13 of the Slovenian Inheritance Act³⁹).

A partner, as a legal heir, also has the right to her or his own compulsory share. This amounts to half of that which would be left to her or him by law. In a case in which the legal share of the partner can be increased at the expense of the co-heirs, there can also be an increase in their share at the cost of other heirs or also at the cost of a legatee.⁴⁰

49. Are there specific rules dealing with the home and/or household goods?

³⁹ Uradni list SRS (Official Journal) Nos 15/1976, 23/1978, Uradni list RS (Official Journal) Nos 17/1991-I, 13/1994, 40/1994, 82/1994, 117/2000, 67/2001, 83/2001, 73/2004, 31/2013, 99/2013.

⁴⁰ K. ZUPANČIČ (ed.), V. ŽNIDARŠIČ SKUBIC, *Dedno pravo (Inheritance Law)*, Uradni list Republike Slovenije, Ljubljana, 2009, at p. 97.

The court *ex officio* separates from the inheritance the testator's household goods (furniture, household equipment, bed linen) which are of minor value to the benefit of the partner and the testator's descendants who lived with the testator in the same household (Art. 23 of the Slovenian Marriage Act).

50. Can a partner dispose of property by will in favour of the surviving partner:

a. In general?

Yes, he or she can. There are no special restrictions.

b. If the testator is married to or is the registered partner of another person?

If the testator is married to or is the registered partner of another person there is no extramarital union. The partner in this life union is not therefore an extramarital partner. The testator may leave property to her or him by will, as would be the case with any third person, but may not disregard the compulsory shares of the legal heirs.

c. If the testator has children?

The testator may leave property to his or her partner but may not neglect the compulsory shares of his or her children as the legal heirs of the first order of inheritance.

51. Can partners make a joint will disposing of property in favour of the surviving partner:

a. In general?

A joint will by which the partners appoint each other as the heirs is invalid under Slovene law. Case law only allows a will by which the partners, in the same document, dispose of their property to the benefit of a third person.⁴¹

b. If either testator is married to or is the registered partner of another person?

If either testator is married to or is the registered partner of another person she or he cannot form a valid extramarital union. In this case, too, a joint will by which two persons who are not in a legally recognised partnership appoint each other as heirs is invalid under Slovene law.

c. If either testator has children?

A joint will by which the partners appoint each other as heirs is invalid in every case under Slovene law.

⁴¹ K. ZUPANČIČ (ed.), V. ŽNIDARŠIČ SKUBIC, *Dedno pravo (Inheritance Law)*, Uradni list Republike Slovenije, Ljubljana, 2009, at p. 127 et seq.

52. Can partners make other dispositions of property upon death (e.g. agreements as to succession or gifts upon death) in favour of the surviving partner:
a. In general?

The partners may conclude all legal transactions that they could conclude with other persons, such as contracts for gifts as contracts *inter vivos* or contracts for gifts *mortis causa* (Art. 62 of the Slovenian Marriage Act), contracts on the right to use, and contracts on lifelong support.⁴² All legal transactions between them must be concluded in the form of a notarial protocol, unless it relates to a normal small gift. Gifts (and legacies) are considered by law to belong to the legal inheritable share unless the testator specifies otherwise. Inclusion can only occur at the request of a co-heir and not *ex officio*. Taking gifts (and bequests) into account applies to all legal heirs, in all orders of inheritance. A bequest to a testamentary heir is only included in the inheritable share if the testator so specifies. The decedent may also not dispossess, by gift, the legal heirs of their compulsory shares. If they are dispossessed of their compulsory shares, the testamentary disposables are first reduced and only then any gifts.

By law, any unpaid disposition of the decedent to the benefit of the partner as the legal heir is considered to be a gift (para. 1 Art. 46 of the Slovenian Inheritance Act). The following are considered to be gifts: the renunciation of rights, the remission of debts, tax on account of the heritable share, gifts for establishing or extending the household, gifts for performing a profession, and life insurance to the benefit of the partner. Shares in property that the decedent bequeaths to persons who enter into consideration as heirs of the first order of inheritance (thus also partners) are also considered to be gifts in a contract on consigning and dividing property if any of the heirs did not agree or were unable to agree with the consignment or division.⁴³

b. If either partner is married to or is the registered partner of another person?

If either testator is married to or is the registered partner of another person she or he cannot establish an extramarital union. A gift to such a partner is considered to be a gift to a third person. It is necessary to return such a gift when it deprives the compulsory shares but only if the decedent gave such a gift during the last year of his or her life.

c. If either partner has children?

The general rules apply in relation to gifts: a decedent may not reduce the compulsory shares of the children as legal heirs by making gifts to a partner.

⁴² A contract on subsistence and contracts for lifelong maintenance which in view of a business purpose is unpaid is considered to be a gift.

⁴³ K. ZUPANČIČ (ed.), V. ŽNIDARŠIČ SKUBIC, *Dedno pravo (Inheritance Law)*, Uradni list Republike Slovenije, Ljubljana, 2009, at p. 108.

- 53. Is the surviving partner entitled to a reserved share⁴⁴ or to any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of a disposition of property upon death (e.g. by will, joint will, or inheritance agreement) in favour of another person?**

As a legal heir, a partner also has the right to a compulsory share. This amounts to half of that to which she or he was entitled by law. In a case in which the legal share of the partner may be increased at the expense of the shares of co-heirs, there can also be an increase of her or his share at the expense of other compulsory heirs or even at the expense of a testamentary heir.⁴⁵

- 54. Are there any statistics or estimations on how often a relationship is terminated by the death of one of the partners?**

No.

- 55. Are there any statistics or estimations on how common it is that partners in an informal relationship make a will in favour of the other partner?**

No.

- 56. Are there any statistics or estimations on how common it is that a partner in an informal relationship is the beneficiary to the other partner's life insurance?**

No.

F. Agreements

- 57. Are there specific rules concerning agreements between partners in an informal relationship? Where relevant, please indicate these specific rules. If not, which general rules apply?**

There are no specific rules for agreements between extramarital partners but the general rules regulating agreements between spouses apply.

- 58. Are partners in an informal relationship permitted to agree on the following issues:**

- a. The division of tasks as between the partners?**

During the course of an extramarital union, an individual obtains a number of personal rights and duties (for example, the duty or right to mutual respect, trust and assistance). The law only enumerates these rights and duties comparatively since,

⁴⁴ See Regulation no. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession [2012] OJ L 201/107.

⁴⁵ K. ZUPANČIČ (ed.), V. ŽNIDARŠIČ SKUBIC, *Dedno pravo (Inheritance Law)*, Uradni list Republike Slovenije, Ljubljana, 2009, at p. 97.

because of their ethical nature, it is not possible to cover them comprehensively. For this reason, partners also have the greatest possibility to freely shape their relations: for example, by agreeing on the way in which they will cultivate mutual respect for each other, where they will live, in what way they will decide on matters of common concern, how they will organise their household and apportion care for the shared home and children. Such agreements in practice are necessary for the functioning of a harmonious partnership but, because of the ethical nature of the rights that are arranged with such agreements, the partners' regulations cannot coercively enforce assistance, respect, understanding, love and the associated capacity for mutual agreement. The only legal measure that can effectively prevent a violation of the personal rights and duties of the partners is in this case separation.⁴⁶

b. The contributions to the costs and expenses of the household?

This question is dealt with in Slovene law either within the context of maintenance or within the general rules on property relations between extramarital partners.

c. Their property relationship?

The rule on common property has a compulsory nature, so that extramarital partners may not arrange mutual property relations by means of a contract which is in conflict with this rule and agree that assets created by work during the time of the extramarital union will not be shared. However, they can agree that all individual assets of the partners shall become common property. Because there is no economic benefit, such agreements between the partners are rare in practice.⁴⁷

d. Maintenance?

Extramarital partners may agree between themselves about maintenance in the event of separation. Such an agreement is concluded before a notary in the form of an enforceable notarial protocol (Art. 81.b of the Slovenian Marriage Act). Partners may conclude an agreement on maintenance in the event of separation before the beginning of the relationship, during the course of the extramarital union or at the time of separation. Partners may also renounce maintenance, but only when the existence of the conditions for maintenance at the time of separation cannot with certainty be anticipated. If the partners at the time of concluding an agreement knew with certainty that one of the partners would require maintenance in the event of separation and because of renouncing the right to maintenance would have to seek social assistance, such an agreement would be null and void. So the conclusion of an agreement on the renunciation of the right to maintenance will only have effect if it is entered into before or during the course of an extramarital union, since at the time of separation it will already be known whether a partner will remain without means of

⁴⁶ See: K. ZUPANČIČ, *Družinsko pravo (Family law)*, Uradni list Republike Slovenije, Ljubljana, 1999, at p. 66.

⁴⁷ K. ZUPANČIČ, B. NOVAK, E. BRANISELJ, 'Slovénie: chapitre XVIII', in: M. VERWILGHEN and S. MAHIEU (ed.), *Régimes matrimoniaux successions et libéralités dans les relations internationales et internes*, Bruylant, Brussels, 2003.

subsistence after the separation. With an agreement on the renunciation of the right to maintenance, the partners may not put at risk the benefit of a child; the partner who renounces maintenance must have sufficient means for her or his subsistence and that of an underage child.

The arrangement for concluding agreements renouncing maintenance and an agreement in which the amount of the maintenance is determined at an exceptionally low level in relation to the capacity of the person who is liable to pay is different. During the course of an extramarital union and the life union connected therewith the general obligation for partners to contribute to the needs of the family applies as well as the obligation to contribute to the support of a partner without his or her own means. This principle derives from the very essence of a partnership as a life union of partners committed to solidarity, and thus it cannot be excluded by agreement.⁴⁸

The right to maintenance ceases if the extramarital partner who receives such maintenance subsequently obtains assets or his or her own income by which he or she can arrange for his or her own subsistence, if he or she concludes a marriage, as well as if he or she enters into an extramarital union (Art. 83 of the Slovenian Marriage Act). Since the law that regulates same-sex unions took effect, the right to maintenance would also be lost if a same-sex union is registered.

e. The duration of the agreement?

An agreement can regulate relations within the duration of an extramarital union or relations between the partners after the cessation of the union (for example, an agreement regulating maintenance relations).

59. Are partners in an informal relationship permitted to agree on the legal consequences of their separation?

Extramarital partners can agree at the time of the cessation of the extramarital union on the sharing of common property and on maintenance after the cessation of the union.

60. Are the agreements binding:

a. Between the partners?

Agreements on maintenance and agreements on the sharing of common property (other agreements on property relations because of the compulsory nature of the rules on property relations are in the main excluded) are binding on extramarital partners in their mutual relations.

b. In relation to third parties?

⁴⁸ B. NOVAK, 'Neue Regelung des Unterhaltsrechts in der Republik Slowenien', *FamRZ*, No. 19, 2005, at p. 1638.

Agreements by extramarital partners and agreements on the sharing of common property rarely affect third parties.

61. If agreements are not binding, what effect, if any, do they have?

The rule on common property is of a compulsory nature. Therefore an agreement in the form of a notarial protocol on the division of common property that does not respect the rule that the amount of the share of the common property is decided in accordance with the contribution to its creation is null and void. A creditor whom the extramarital partners deceive and deprive her or him of the payment of her or his dues can also lead to nullity under the general rules of the law of obligations.

62. If specific legislative provisions regulate informal relationships, are the partners permitted to opt in or to opt out of this specific regulation?

The legal consequences of an extramarital union are determined on the basis of the law alone (without a court decision) and irrespective of whether the partners who have been living together for an extended period even really desire this. An agreement between the partners that their long-term intensive life union will not be considered to be an extramarital union does not therefore have effect. Since the amendment to the Slovenian Marriage Act of 2004⁴⁹ an extramarital partner may, by agreement on the prior renunciation of maintenance after the cessation of the union, exclude a maintenance arrangement but she or he cannot exclude the rules of property relations between the partners because this arrangement is still of a compulsory nature.

63. When can the agreement be made (before, during, or after the relationship)?

An agreement (on maintenance) can be entered into before the beginning of the relationship, during the course of an extramarital union or at the time of separation.

64. What formal requirements, if any, govern the validity of agreements:

a. As between the partners?

All agreements between extramarital partners on property relations must be concluded in the form of a notarial protocol; agreements on maintenance relations between partners must be concluded in the form of an enforceable notarial protocol.

Extramarital partners may agree between themselves about maintenance in the event of separation. Such an agreement is concluded before a notary in the form of an enforceable notarial protocol (Art. 81.b of the Slovenian Marriage Act). Partners may conclude an agreement on maintenance in the event of separation before the beginning of the relationship, during the course of an extramarital union or at the time of separation. Partners may also renounce maintenance, but only when the existence of the conditions for maintenance at the time of separation cannot be

⁴⁹ Uradni list RS (Official Journal) No. 16/2004.

anticipated with certainty. If the partners at the time of concluding an agreement knew with certainty that one of the partners would need maintenance in the event of separation and because of renouncing the right to maintenance would have to seek social assistance, such an agreement would be null and void. So the conclusion of an agreement on the renunciation of the right to maintenance will only have effect before or during the course of an extramarital union, since at the time of separation it will already be known whether a partner will remain without the necessary means to support himself or herself after the separation. With an agreement on the renunciation of the right to maintenance, the partners may not put at risk the benefit of a child; the partner who renounces maintenance must have sufficient means for her or his subsistence and that of an underage child.

The rule on common property is of a compulsory nature.

b. In relation to a third party?

There are no special provisions.

65. Is independent legal advice required?

All agreements between extramarital partners on property relations must be concluded in the form of a notarial protocol, and agreements on maintenance relations between partners must be concluded in the form of an enforceable notarial protocol. Prior to drafting the notarial protocol, the notary must explain to the parties, in an understandable way, the content and legal consequences of the intended legal transaction or a statement of intent and explicitly draw their attention to known and normal risks in connection with concluding such a legal transaction. The notary must also draw the parties' attention to possible other circumstances in connection with the intended legal transaction if he or she knows of them, except for data that the notary is required to protect as confidential. He or she must also prevent the parties from making unclear, incomprehensible or dubious statements and explicitly warn them of the possible legal consequences of such statements. If the parties persist with such statements, he or she must insert them in the notarial protocol but, in addition, the warning given to the parties in connection with these statements must also be included in the protocol (Art. 42 of the Slovenian Notary Act).⁵⁰

66. Are there any statistics or estimations on the frequency of agreements made between partners in an informal relationship?

No.

67. Are there any statistics or estimations regarding the content of agreements made between partners in an informal relationship?

⁵⁰ Uradni list RS (Official Journal) Nos 13/1994, 48/1994, 82/1994, 41/1995, 83/2001, 73/2004, 98/2005, 17/2006, 115/2006, 33/2007, 45/2008, 91/2013.

No.

G. Disputes

68. Which authority is competent to decide disputes between partners in an informal relationship?

A district court decides on disputes on the legal maintenance of extramarital partners in a civil procedure.

In disputes concerning the way in which the common property is to be divided, when it is not a dispute about the extent and shares of the common property of the partners a local court will decide the issue in a civil procedure.

In disputes in relation to the extent and shares of the common property, subject-matter jurisdiction is dealt with under the general rules on subject-matter jurisdiction in civil cases. Under these rules, a local court has jurisdiction to hear, at first instance, disputes relating to legal property claims if the value of the disputed property does not exceed 20,000 euros (para. 1 Art. 30 of the Slovenian Civil Procedure Act⁵¹), otherwise a district court decides at first instance. The courts decide on disputes in relation to the extent and shares of common property in a civil procedure.

69. Is that the same authority as for spousal disputes?

Yes.

70. Can the competent authority scrutinise an agreement made by the partners in an informal relationship? If yes, what is the scope of the scrutiny?

A court may find that an agreement is in conflict with compulsory regulations, the Slovenian Constitution or moral principles, in which case it will be null and void.

71. Can the competent authority override or modify the agreement on account of fairness towards a partner, the rights of a third party, or on any other ground (e.g. a change of circumstances)?

The law does not contain any rules to the effect that the competent authority can override or modify an agreement between extramarital partners.

72. What alternative dispute-solving mechanisms (e.g. mediation or counselling), if any, are offered or required with regard to disputes arising out of informal relationships?

⁵¹ Uradni list RS (Official Journal) Nos 26/1999, 96/2002, 110/2002, 58/2003, 2/2004, 69/2005, 90/2005, 43/2006, 52/2007, 45/2008, 111/2008, 121/2008, 57/2009, 12/2010, 50/2010, 107/2010, 75/2012, 76/2012, 40/2013, 92/2013, 6/2014.

A mediation procedure is available to extramarital partners for resolving disputes. This can take place before a court procedure or during it if, subject to an agreed proposal by the parties, the court suspends the procedure for the purpose of mediation.

73. What are the procedural effects of an agreement on ADR between partners in an informal relationship? Can any partner seize the competent authority in breach of the ADR clause?

The partners must register with the court any agreement achieved in mediation as a court settlement. The court will not allow a court settlement if this does not benefit a child.

No, partner can seize the competent authority in breach of the ADR clause.

74. Are there any statistics or estimations on how common it is that partners in an informal relationship include an ADR clause in their agreement?

No.